

PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re:	Ratliff, et al.	Confirmation No.:	6914
Appl. No.:	09/961,419	Art Unit:	2161
Filed:	09/25/2001	Examiner:	Charles C. Agwumezie
For:	AVAILABILITY BASED VALUE CREATION METHOD AND SYSTEM		

Attorney's Docket No. 023895/259077

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**PRE-APPEAL REQUEST FOR REVIEW**

Sir:

Applicant in the above-identified patent application hereby requests review of the Official Action dated June 4, 2007, rejecting Claims 1-14, 16, 17, 19-24, 26, 27, 29-82, and 84-90. This request is being filed concurrent with a Notice of Appeal, and no amendments are being filed herewith.

**Remarks/Arguments** in support of this request begin on page 2 and end on page 5 of this paper, and accordingly include no more than the five (5) pages of remarks permitted to be provided.

### **REMARKS/ARGUMENTS**

This communication is filed in response to the Official Action of June 4, 2007. The Examiner rejects Claims 1, 11, 31, 41, 49, and 59 under 35 U.S.C. §112, first paragraph, for failing to comply with the written description requirement. The Examiner rejects Claims 1-6, 8-14, 16, 19-24, 26, 29-36, 38-68, 70, 73-75, 77-82, 84, and 88-92 under 35 U.S.C. §103(a) as being unpatentable over European Patent No. EP0973112 to Goodwin III in view of U.S. Patent No. 6,993,494 to Boushy et al. In addition, Claims 7, 17, 27, 37, 47, 55, 69, and 85 are rejected under 35 U.S.C. §103(a) as being unpatentable over Goodwin in view of Boushy and further in view of U.S. Patent No. 6,553,346 to Walker et al. Finally, the Examiner rejects Claims 71, 72, 76, 85, 86, and 87 under 35 U.S.C. §103(a) as being unpatentable over Goodwin in view of Boushy and further in view of Official Notice.

As explained below, however, Applicants respectfully submit that the claimed invention is supported by the specification and is patentably distinct from the cited references and request reconsideration and reversal of all of the aforementioned rejections.

The Examiner rejects Claims 1, 11, 31, 41, 49, and 59 under §112, first paragraph, as allegedly lacking support in the specification. In Applicants' previous response, Claims 1, 11, 31, 41, 49, and 59 were amended to recite modifying at least one entry in the results to reflect a more competitive price or position when compared to another entry in the results comprises increasing availability of the entry at a predefined price level having the more competitive price. The Examiner contends that the amendment includes new matter that is not supported by the specification.

Applicants respectfully disagree and believe that the specification adequately supports the amendments. For example, paragraph 13 of the present application discloses that "the new method determines whether to make seats available at a price deemed to be competitive." Moreover, support for the claimed invention may also be found, for example, in paragraphs 26 and 27 which discloses "dynamically changing the availability of existing fare products." Example 1 discussed in paragraphs 36 and 37 of the present application discloses that "the AA price was reduced as a result of dynamically opening the availability of a fare class V by 2 seats (fare class V was not available in the prior method example or the AA \$414.00 option would

have been displayed).” Clearly, “opening the availability” is one example of increasing availability as recited by the claimed invention. Thus, an airline may choose to increase the availability of a fare class that is generally only available for advance purchases to produce a more competitive price even though the advance purchase deadline has passed. Therefore, Applicants submit that Claims 1, 11, 31, 41, 49, and 59 are adequately supported in the present application and that the rejection under §112, first paragraph, is overcome.

The Examiner rejects independent Claims 1, 11, 31, 41, 49, and 59 as being obvious over a combination of Goodwin and Boushy. Each of Claims 1, 11, 31, 41, 49, and 59 recites modifying at least one entry in the results to reflect a more competitive price or position when compared to another entry in the results comprises *increasing availability* of the entry at a predefined price level at the more competitive price. The Examiner appears to believe that because Boushy discloses that availability may be used to determine an initial bid price and that the bid price may be subsequently modified to reflect a more competitive price, that Boushy discloses increasing availability of at least one entry at a predefined price level having the more competitive price.

Applicants respectfully disagree with the interpretation of Boushy, as Boushy clearly does not teach or suggest this particular recitation of Claims 1, 11, 31, 41, 49, and 59. The Examiner acknowledges that Goodwin does not disclosing modifying prices based at least partially on availability. Moreover, Boushy simply discloses that availability may be used to determine an initial bid price and that the bid price may be subsequently modified to a more competitive price. In particular, Boushy discloses that initial bid price may be based on “conventional means” and “represents the unadjusted priced that would normally be charged for the resource” (col. 7, lines 64-66). Thus, Boushy only uses availability to determine an initial bid price but does not otherwise disclose that the availability is increased to provide a more competitive price. Boushy also discloses that the bid price may be modified to take into account the indirect value of the customer (i.e., additional revenue derived from customer’s purchase, consumption, or use of a resource) or based on competitive pressures. “For example, if competing hotels are offering rooms at lower prices, the bid price for a room may be adjusted downward in order to remain competitive” (col. 8, lines 37-40). Thus, Boushy clearly does not

teach or suggest that the availability of the resource at one of a plurality of predefined price levels is modified, let alone increased to a predefined price level having a more competitive price, in order to produce a more competitive price, which is unlike Claims 1, 11, 31, 41, 49, and 59.

Furthermore, in Applicants' previous response, Claims 21 and 74 were amended to recite modifying at least one entry to reflect a more competitive position based on a combination of a price and a non-monetary incentive, based on a level of service provided, or based on marking up the price of the entry. The Examiner contends that Boushy discloses this particular recitation of Claims 21 and 74, as Boushy discloses that the adjusted bid price may be increased if the adjusted bid price is reduced below a minimum room price. Boushy also discloses that an initial bid price may be adjusted based on an indirect value to the customer, such as gaming revenue expected to result from a customer's stay at a hotel.

The Examiner concedes that Goodwin does not disclose modifying at least one entry in the database results to reflect a more competitive price or position when compared to another entry in the database results based at least partially on combining a price and a non-monetary incentive, modifying a price based on a level of service provided, or marking up the at least one entry while maintaining a competitive price position. As discussed above, Boushy discloses adjusting an initial bid price based on the indirect value of the customer or competitive pressures. However, Boushy does not disclose that the initial bid price is adjusted to account for the indirect value of the customer when comparing the initial bid price to other bid prices. In other words, Boushy only discloses adjusting the initial bid price based on the indirect value of the customer without regard to producing a more competitive position for the initial bid price. Therefore, Boushy also fails to teach or suggest independent Claims 21 and 74 in which an entry is modified when compared to another entry.

Thus, none of the cited references, taken individually or in combination teach or suggest independent Claims 1, 11, 21, 31, 41, 49, 59, and 74. Since the independent claims are patentably distinct from the cited references, the claims that depend therefrom are also distinguishable from the cited references for at least the same reasons since the dependent claims include each of the elements of a respective independent claim. Consequently, Applicants

Appl. No.: 09/961,419  
Amdt. dated 9/4/07  
Reply to final Office Action of June 4, 2007

submit that, for at least those reasons above, the rejections of the claims under 35 U.S.C. § 103(a) are overcome.

### **CONCLUSION**

For at least the foregoing reasons, Applicants respectfully request that the rejections be reversed and that a Notice of Allowance be issued.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



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